

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHN ELLIOTT COLLINS §
v. § CIVIL ACTION NO. 6:08cv402
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner John Elliott Collins, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the conditions of his confinement. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Collins made clear in his petition that he was not challenging the fact or length of his confinement, but rather stated that he is challenging “prison conditions, medical treatment.” He said that he suffers from severe pain and that upon his transfer to another unit, the medication which he had been receiving was discontinued and now he is unable to receive effective medication.

After review of the pleadings, the Magistrate Judge issued a Report on October 23, 2008, recommending that the petition be dismissed without prejudice. The Magistrate Judge observed that habeas corpus is reserved for challenges to the fact or length of confinement, and cannot be used for any other purpose; thus, Collins’ claims cannot be adjudicated through the vehicle of a petition for the writ of habeas corpus. The Magistrate Judge also recommended that Collins be denied a certificate of appealability *sua sponte*, specifying that such a certificate would relate only to an appeal of the present habeas corpus petition and would not affect Collins’ right to seek relief through the vehicle of a civil lawsuit under 42 U.S.C. §1983, which is the proper means through which to

bring an action challenging the conditions of confinement or any claims relating to deliberate indifference to a serious medical need.

Collins did not file objections to the Magistrate Judge's Report; rather, he wrote two letters to the Court saying that he was "disappointed" that the Court did not consider his case, but expressing appreciation for the "without prejudice" recommendation. Collins also asked for copies of the documents which he had filed.

Because Collins did not object to the proposed factual findings or conclusions of law in the Magistrate Judge's Report, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in the cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice. Collins may, if he wishes, file a civil lawsuit under 42 U.S.C. §1983 raising the claims which he has presented in this petition. It is further

ORDERED that the Petitioner John Collins is hereby denied a certificate of appealability *sua sponte*, with such denial affecting only an appeal of the present case and not affecting his right to file a Section 1983 claim. It is further

ORDERED that the Petitioner's request for copies of his pleadings is GRANTED. The Clerk shall send to the Petitioner John Elliott Collins, without charge, copies of docket no.'s 1, 2, 3, and 7. Finally, it is

ORDERED that any and all other motions which may be pending in this cause are hereby DENIED.

So ORDERED and SIGNED this 21st day of November, 2008.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**